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MCLE SELF-STUDY

Immigration Consultant Fraud

The Role of the Prosecutor, Legal Service Providers and the Bar

By Gloria L. Castro, Esq.*

Introduction

Immigration policy in this country wavers from fervent anti-immigrant tides, best exemplified by California voters' passage of Proposition 187 in 1994,¹ to the Bush administration's recent discussion of creating a guest worker program that would give undocumented persons the right to work in the United States based on their job history and length of time in the United States.²

However, whether the discussion is to broaden or restrict our immigration policy, individuals seeking to attain or adjust the immigration status for themselves or a relative will need to obtain the assistance of immigration attorneys and/or immigration consultants.

These immigration-related services are vital for individuals who can find it difficult, if not impossible, to navigate the changing tides of immigration laws and policies on their own. Immigration laws are difficult to understand. Indeed, some immigration courts have described immigration laws as resembling "King Mino's labyrinth in ancient Crete,"³ and "second only to the Internal Revenue Code in complexity."⁴

The availability of quality immigration services for consumers becomes even more

crucial in view of obstacles faced by immigrant communities seeking accurate and reliable information. These obstacles include language barriers, cultural differences, a misunderstanding of our legal system and the prevalence of lore and myth regarding the availability of immigration benefits. Additionally, non-profit legal services organizations are restricted by the federal government in the types and amount of services they can provide to undocumented persons.

Consumers' ever present demand for services related to regularizing their immigration status or that of a family member has created an availability of immigration services that vary in quality, reliability and cost. There are three general types of services available to individuals seeking immigration assistance. First, immigration and naturalization attorneys provide legal advice, court representation, and related services. Second, accredited representatives designated by non-profit social services agencies may represent individuals at low-cost before the Executive Office of Immigration Review.⁵ Legal services are also available to indigent or low-income persons from non-profit legal service providers. Finally, immigration consultants offer limited services, such as filling out forms selected by the individuals with information provided by the individual applying for immigration benefits

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from the United States Immigration and Naturalization Service (INS).

This article concentrates on the fraud perpetrated by some individuals in the third category above, who are not supervised by an attorney and who unlawfully provide legal advice to individuals seeking to attain or adjust their immigration status.

This article describes the common types of fraud perpetrated against immigrants by non-attorney legal service providers providing immigration services. It summarizes some California laws that apply to persons acting in the capacity of immigration consultants. Finally, this article discusses the need for better information among immigrant communities about how to prevent becoming immigration consultant fraud victims, and will argue that there is a need for prosecutors, legal service providers and the private bar to enforce laws that regulate immigration consultants.

This article by no means aims to cast all immigration consultants as preying on consumers and providing shoddy work. Many immigration consultants defend their work and contend that they are providing a valuable service at a substantially lower rate than that of an attorney.⁶ Admittedly, as in many other professions, the fraudulent practices by a few bad actors cause damage to the reputation of

those who operate honestly and within the confines of laws regulating them. Nevertheless, this type of fraud by unscrupulous individuals purporting to provide assistance to immigrants seeking to legalize their status in this country is particularly rampant in California,⁷ is perpetrated nationwide,⁸ and has been perpetrated for an extended period of time.⁹

I. The Problem

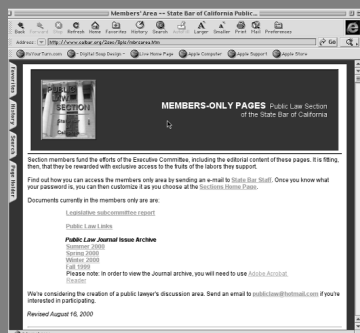
Consumers seeking to legalize their status in this country have long been subject to considerable deception and outright consumer fraud for many reasons. Immigrants are particularly vulnerable to fraud because of a combination of their tenuous status in this country and their lack of knowledge about their legal rights.¹⁰ Their desire to normalize their status makes many immigration more willing to try anything promised to them by seemingly trustworthy and knowledgeable individuals.¹¹ At the same time, federal restrictions on the availability of free or low-cost legal assistance to undocumented immigrants from non-profit legal service providers receiving federal funds relegates this group to rely on immigration consultants as an option.¹²

These characteristics make immigrants perfect victims of this and other consumer

scams since immigrants are less likely to complain to law enforcement authorities or take legal action against those that defraud them for fear of being detected and deported by the INS. Immigrants' inherent distrust of law enforcement only exacerbates their vulnerability. Prosecutors admit that it is very hard to obtain complaints from victims.¹³ Further, many are unaware that they are entitled to utilize our justice system to enforce their legal rights whether they are here legally or not. Finally, immigrants are unaware that only attorneys may give legal advice to them. Few know, for example, that non-attorneys are prohibited from advising immigrants whether they qualify for a particular form of immigration relief based on a particular set of circumstances.¹⁴

Immigration consultant willing to defraud immigrants have a large pool of potential clients seeking immigration services from whom to derive a profit. The number of undocumented immigrants in the United States is estimated to range from 6 to 11 million.¹⁵ In addition, Census 2000 reveals that 28.4 million foreign born individuals reside in the United States.¹⁶ Among the foreign born, 51.0 percent were born in Latin America, 25.5 percent were born in Asia, 15.3 percent were born in Europe, and the remaining 8.1 percent were born in other regions of the world.¹⁷ Of these foreign born

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individuals, significant numbers will likely require legal advice concerning immigration laws and forms of relief either for themselves or for relatives on whose behalf they petition the INS for immigration benefits. These individuals will, in many cases, require immigration advice and assistance over long periods of time because the processes for legalization of immigration status are, in most cases, confusing and time-consuming. An INS spokesman in Washington admits that "As a result of the wait, there's a great potential for scams."¹⁸

Immigration consultants range from the well-established firms and individuals that operate within the confines of the laws to the operators that set up shop in swap meets or hold seminars in convention centers. Some immigration consultants travel from state to state operating the same scam: promising impossible forms of immigration relief to people willing to pay any price for the privilege to work and/or remain in this country legally.¹⁹

Many immigration consultants advertise or represent themselves as attorneys in foreign-language media, such as radio and ethnic publications, for heavily relied upon by some immigrant communities.²⁰ For example, in the Spanish speaking community, immigration consultants have used, in advertising, the terms "notario," a term that implies that the person has achieved a degree of jurisprudential knowledge, and "licenciado," which implies that the person is licensed to practice law. Untrue and misleading representations made in these media often evade the notice of law enforcement due to the fact that the advertising is in the native language of the immigrant clientele and not in English.²¹ Other immigration consultants will state that they are attorneys when meeting with their victims.²² The use of these terms in advertising and transactions, intended to mislead consumers into believing they are contracting for legal services, is sanctioned by California law,²³ but widely and openly used as an effective sales tactic.

While consumers may be encouraged not to take the word of the immigration consultant that he or she is an attorney, it is difficult for anyone, even a person proficient in English, to ascertain whether someone is indeed an immigration attorney. This is because attorneys practicing in immigration courts can be members of any state bar, not just the California State Bar.²⁴ Therefore, an

immigration attorney can practice in immigration courts in California, without having been admitted to the State Bar of California.²⁵ Therefore, clients seeking the backgrounds of immigration attorneys must identify both the attorneys' particular state bar of admission as well as their status within that state bar.

Sometimes, consumers are made aware of fraudulent tactics that the immigration consultant may employ, such as filing frivolous political asylum applications on their behalf.²⁶ However, immigration consultants' failure to warn consumers of adverse consequences may lead to immigrants' deportation, as well as charges of fraudulent and frivolous applications.²⁷ Additionally, some immigration consultants may sign without client authorization or improperly file some of their clients' critical documents and forms required by the INS. Such fraudulent acts not only jeopardize consumers' immigration status, but also exacerbate the backlog of frivolous applications at the INS.²⁸

Unfortunately, the cost and quality of immigration services are not always proportional. It is not unusual for immigration consultants to charge their clients the same amount or significantly more than what attorneys would charge for similar services.²⁹ Consumers frequently pay immigration consultants for purported legal services at outrageous prices ranging anywhere from \$3,000 for frivolous political asylum petitions to \$40,000 for legal permanent residency applications.³⁰ Some victims report being charged \$1,000 for forms that they later discover could have been completed at lower cost by social service agencies.³¹ In some cases, either shoddy work or no work is performed at all.³²

Occasionally, clients had already been advised by attorneys that, according to the particularities of their situation, they do not qualify for any form of immigration relief.³³ However, immigration consultants can easily convince unsophisticated and hopeful consumers that they, for a price, know of a better way to petition for immigration relief on the clients' behalf.³⁴

For victims, the consequences of immigration consultant fraud can be devastating. For example, poor immigrants often lose their life savings to unscrupulous immigration consultants and are deported from

the country as a result of the immigration consultant's actions. A recent article cited the case of a Chinese couple who paid \$40,000 to one such immigration consultant only to run the risk of being deported back to China.³⁵

A Case Study³⁶

Stories of immigration consultants whose advice have led to their clients' deportation are very common. In some cases, immigration attorneys form unethical relationships with immigration consultants.³⁷ Such relationships take many forms, including the active referral of cases which require attorney representation by immigration consultants, as well as the failure by attorneys to formalize attorney client relationships.³⁸ Other practices include the retention of clients' original documents by immigration consultants,³⁹ and advising unqualified consumers to apply for various forms of immigration relief.⁴⁰

A case in point is the account of a Mexican family that sought the assistance of an immigration consultant to renew work permits about to expire. The immigration consultant informed the family that he was an attorney with 20 years of experience in immigration law. Rather than help them renew their work permits, the immigration consultant instead promised that he could petition the INS for political asylum for the family on the basis of the "economic hardship" the family would suffer if forcefully returned to Mexico. The immigration consultant convinced the family that the filing of his petition combined with the fact that the family had resided in the United States for more than seven years, would guarantee the receipt of legal permanent residency within a year.

Although the family had been defrauded before by an immigration consultant, they still paid the immigration consultant almost \$4,000, and allowed him to complete and submit the political asylum petition to INS. Only after they were interviewed by an asylum officer did the family discover that there was no basis for political asylum by reason of "economic hardship."⁴¹ They later received a notice denying them political asylum and ordering them to appear before the immigration court. When they took the order to appear to the immigration consultant, they requested their "attorney" to represent them in court. When the immigration consultant vehemently declined to represent them in or even accompany them to court, the family began to

suspect that their “attorney” was not an attorney. They ultimately retained and paid for a bona fide attorney to handle the immigration court hearing.

This family was counseled by a public interest law firm to sue the immigration consultant in small claims court, where they prevailed. The family prevailed once more when the matter was appealed. The family recovered the money they paid to the immigration consultant. Shortly thereafter, the family appeared in immigration court for a final hearing during which the family petitioned the immigration court for voluntary departure, a form of relief which specified a date certain for voluntary departure to Mexico. It was a frustrating and sad outcome for a family that, absent the fraudulent actions of the immigration consultant, could have continued living in America on another basis. Unfortunately, this family’s story occurs on a daily basis to untold numbers of immigrant families.

After more than 20 small claims court actions were filed by many persons against the immigration consultant who assisted the Mexican family, the Ventura County District Attorney’s Office investigated allegations of fraud against him in May 2001.⁴²

II. Summary of Selected Statutes that Apply to Immigration Consultants

Fraudulent immigration consultants in California run afoul of various laws in contacts with consumers and in their advertising. These laws include the Immigration Consultants Act (“ICA”) (Cal. Bus. & Prof. Code, § 22440 et seq.), statutes prohibiting the unauthorized practice of law (“UPL”) (Cal. Gov’t Code, § 6125), laws requiring the certification of a business engaging in whole or in part as a lawyer referral service (Cal. Gov’t Code, § 6155 et seq.), and statutes prohibiting false, deceitful and untrue advertising (Cal. Bus. & Prof. Code, §17500 et seq.). In the example of the case study of the family from Mexico in section I above, the immigration consultant violated several of these provisions, such as the ICA and the UPL statutes.

IMMIGRATION CONSULTANTS ACT

The ICA was enacted in an attempt to protect immigrants from unscrupulous immigration consultants, to provide greater

regulation of immigration consultants, and to ensure that legitimate consultants are able to maintain their businesses.⁴³ In enacting the ICA, the Legislature found that illegitimate immigration consultants have in the past collected money from unknowing immigrants who did not receive the services they expected and who could not afford an attorney.⁴⁴

The ICA governs “immigration consultants,” defined as “non-lawyers who offer non-legal assistance in immigration matters in California.”⁴⁵ Non-legal assistance includes (1) completing a form provided by a federal or state agency but not advising a person as to their answers on those forms; (2) translating a person’s answers to questions posed in those forms; (3) securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms; (4) submitting completed forms on a person’s behalf and at their request to the INS; and (5) making referrals to persons who could undertake legal representation activities for a person in an immigration matter.⁴⁶ The ICA prohibits an individual from acting as an immigration consultant unless authorized to practice before the Board of Immigrant Appeals or the INS.⁴⁷

Prior to engaging in the business or acting in the capacity of an immigration consultant on or after January 1, 1998, a person must file with the Secretary of State⁴⁸ a bond of \$50,000 executed by a corporate surety.⁴⁹ The ICA permits a person who is awarded damages in a civil action for injuries caused by a person’s violations of the ICA to recover damages from the \$50,000 bond.⁵⁰ Prior to providing a client with immigration consulting services, the immigration consultant must provide the client with a written contract in both English and the customers native language.⁵¹ The contract sets forth the client’s rights and the immigration consultant’s responsibilities under the ICA.⁵²

It is unlawful for an immigration consultant to make false or misleading statements to a client while providing services to that client,⁵³ make any guarantee or promise to a client, unless the guarantee or promise is in writing and the immigration consultant has some basis in fact for making the guarantee or promise, make any statement that the immigration consultant can or will obtain special favors from or has special influence with the INS, or charge a client a fee for referral of the client to another for services

which the immigration consultant cannot or will not provide to the client.⁵⁴

Immigrant consultants must conspicuously display information in their offices that includes the consultant’s full name and address, evidence of compliance with any bonding requirement, and a statement, in the language of the immigration consultant’s clientele, that the consultant is not an attorney.⁵⁵ Immigration consultants are prohibited from retaining the original documents of clients.⁵⁶ They are also prohibited from literally translating from English into another language with the intent to mislead words or titles, including, but not limited to, “notary public,” “notary,” “licensed,” “attorney,” “lawyer,” or any other terms that imply the person is an attorney in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material describing the immigration consultant.⁵⁷

Immigration consultants who violate the ICA are subject to a civil penalty not to exceed \$100,000 for each violation, to be assessed and collected in a civil action brought by any person injured by the violation.⁵⁸ In addition, violation of the ICA is a misdemeanor punishable by a fine of \$2,000 to \$10,000 per client and violation, or imprisonment in the county jail for not more than one year, or by both fine and/or restitution and imprisonment.⁵⁹ A second or subsequent violation of the ICA is a misdemeanor and potential felony subject to imprisonment in state prison.⁶⁰ Victims of an immigration consultant’s ICA violations must commence a civil action to enforce any cause of action pursuant to the ICA within four years after the victim discovers the facts constituting the ICA violation.⁶¹

A common violation of the ICA may be the failure to post the required bond with the Secretary of State prior to beginning to engage in the business of immigration consulting.⁶² The bond is meant to protect consumers who are named by an immigration consultant unlawful practices. At a glance, there is a great difference between the numbers of businesses and individuals that have posted bonds with the Secretary of State and the amount of businesses that operate in any given California city with business names that have the words “immigration” or “legal services” that offer “immigration,” “NACARA,” work permits, “TPS” and other terms commonly known to immigrant communities as forms of

immigration relief. Another common violation of the ICA is to provide legal assistance.⁶³ The ICA only permits the provision of non-legal assistance, which is also proscribed by California's UPL statute.⁶⁴

UNAUTHORIZED PRACTICE OF LAW

Under the UPL, California Business and Professions Code section 6125 provides that "[n]o person shall practice law⁶⁵ in California unless the person is an active member of the State Bar."⁶⁶ "Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, is guilty of a misdemeanor."⁶⁷

Immigration consultants who are not attorneys cannot give legal advice regarding the form of relief for which a petitioner may be qualified. The ICA only permits immigration consultants to provide non-legal assistance and advice, such as filling out immigration forms and collect supporting documents for immigration relief petitioners.

Routinely, immigration consultants ask their clients questions about their legal status and advise them about forms of immigration relief specific to those clients. This is the unauthorized practice of law. A non-attorney's conduct of inserting solicited information from questionnaires and personal interviews into immigration forms constitutes the unauthorized practice of law. Further, the filing of forms with the INS where the consumer has not chosen the form that is to be filed, but rather followed the advice of the consultant regarding which form to file, is the unauthorized practice of law. Likewise, if an immigration consultant answers questions posed by a consumer regarding his or her likelihood of qualifying for immigration relief, the provision of this advice is also the unauthorized practice of law. In addition, advising clients of the differences between various forms of immigration benefits, assessing the client's individual facts and, on the basis of the client's facts, forming and communicating an opinion as to the form of relief for which their client qualifies constitute the practice of law. If such advice is given by a non-attorney, it also constitutes the unauthorized practice of law.

CERTIFIED LAWYER REFERRAL SERVICES

Unless a business or individual operating as a lawyer referral service is certified by the

State Bar of California, no individuals, partnerships, or corporations may operate for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys.⁶⁸ In addition, no attorney may accept a referral of such potential clients by an uncertified lawyer referral service.⁶⁹ A referral service shall not be owned or operated, in whole or in part, directly or indirectly, by those lawyers to whom, individually or collectively, more than 20 percent of referrals are made. A violation or threatened violation of this section may be enjoined by any person.⁷⁰

Free lawyer referral is commonplace. However, if an immigration consultant is making a client referral to an immigration attorney for a fee, and the client is not given a choice of the attorney to whom he/she is being referred, that immigration consultant is operating as a lawyer referral service, and must be certified as such by the State Bar of California.⁷¹

Furthermore, the ICA states that non-legal assistance pursuant to the act includes "making referrals to persons who could undertake legal representation activities for a person in an immigration matter."⁷² However, the ICA also provides that it is a violation of the act to "charge a client a fee for referral of the client to another for services which the immigration consultant cannot or will not provide to the client."⁷³ Indeed, the Act requires that the immigration consultant conspicuously display in his or her office a sign setting forth this prohibition.⁷⁴

FALSE, DECEITFUL, AND UNTRUE ADVERTISING

California Business and Professions Code section 17500 et seq. provides that it is unlawful for any person or firm with intent directly or indirectly to perform services or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that those services which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. Any violation of the provisions of this section is a misdemeanor punishable by

imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both imprisonment and fine.⁷⁵

Chances of falling prey to immigration consultants' false advertising is great, given the volume of advertising on radio, yellow pages, billboards and the like.

III. Addressing the Problem Through Community Education and Enforcement of Laws Applicable to Immigration Consultants

EDUCATION

Attaining legal status is a paramount prerequisite to success in this country. Without legal status, individuals cannot obtain employment or even a driver license to get to work.⁷⁶ Therefore, it is not surprising that no matter how educated a consumer may be, he/she can fall prey to unscrupulous individuals willing to promise the impossible, be it legal permanent residency or a work permit within a short time.

It is not uncommon for individuals to be victims of immigration consultant fraud more than once. While many are unaware of the laws available and are easily misled, other victims are willing to take a chance on individuals who seem convincing and well connected to the immigration process. Many unsuspecting immigrant victims are, therefore, willing to give it a try for the sake of finding the panacea to their immigration woes.

Accordingly, the need for consumer education regarding immigration consultant fraud is important.⁷⁷ Consumers need to know that they are entitled to utilize our justice system to enforce their legal rights whether they are documented immigrants or not. Consumer education must continue to educate victims on redressing their grievances against immigration consultant who act fraudulently.⁷⁸ Immigrants are unaware that only attorneys may render legal advice, while non-attorneys are prohibited from giving legal advice (e.g., advice that based on a particular set of circumstances immigrants may qualify for a particular form of immigration relief.) More consumer education needs to be focused on identifying what constitutes the provision of legal advice and who may provide it.⁷⁹

EFFORTS TO COMBAT IMMIGRATION CONSULTANT FRAUD

District attorneys and city attorneys in California have successfully prosecuted immigration consultants under the ICA, which authorizes the charging of certain violations as misdemeanors.⁸⁰ Since 1998, for example, the Los Angeles County District Attorney's Office has prosecuted at least 40 immigration consultants who violated the ICA.⁸¹

Other local prosecutors have initiated active investigations into such matters. For example, over the past five years, the Santa Clara County District Attorney's Office sent 65 notices to immigration consultants advising them to comply with State laws.⁸² As a result, a few immigration consultants not meeting the letter of the law have voluntarily closed their businesses.⁸³

Moreover, Karen Nobumoto, President of the State Bar of California, who has prosecuted fraudulent immigration consultants as a Los Angeles County Deputy District Attorney,⁸⁴ is spearheading a legislative effort by the State Bar to make the unauthorized practice of law a felony, so that immigration consultants would face the same punishments as attorneys who are caught practicing law without a license.⁸⁵

The private bar has filed civil actions against immigration consultants in the State. For example, Steve Baughman, Baughman and Wang partner, has represented Chinese immigrants whose immigration applications for residency were allegedly mishandled by consultants.⁸⁶ More civil actions like these should be filed by private bar as pro bono representation of the indigent. The ICA provides for the recovery of attorney's fees, costs and the institution of up to a \$100,000 civil penalty.⁸⁷ The availability of such civil penalties and the recovery of attorneys fees should encourage members of the Bar to file civil actions against immigration consultants. Although some immigration consultants may not have deep pockets, such actions at the very least may be disincentives for them to operate in flagrant disregard of the law.

Public interest organizations, such as California Rural Legal Assistance, have sued immigration consultants who have defrauded immigrants by promising amnesty.⁸⁸ At the same time, ethnic bar associations, such as the

Mexican-American Bar Association and the Southern California Chinese Lawyers Association have formed committees that address the unauthorized practice of law by non-attorneys.⁸⁹

The significant synergy among prosecutors, legal service providers, and the Bar portend a broad-based front to combating immigration consultant fraud.

Conclusion

Immigration relief policy can breed the unintended consequence of immigration consultant fraud for the consumer. The Bush administration is considering what could be the most significant revision of immigration laws since Congress enacted the Immigration Reform and Control Act of 1986, which gave amnesty to nearly 3 million undocumented persons of which two-thirds were Mexican. If enacted, immigrants seeking to take advantage of such new immigration policies may be misled and harmed by unscrupulous immigration consultants.⁹⁰ It is, therefore, incumbent upon prosecutors, legal service providers and the Bar to combat immigration consultant fraud.

Endnotes

- 1 California voters passed Proposition 187 in 1994. (Initiative Measure (Prop. 187, § 6, approved Nov. 8, 1994).) The proposition aimed to deny public schooling, health programs and welfare to undocumented individuals. Various portions of the proposition were struck down by courts in years after the proposition passed.
- 2 President Bush recently established a White House Task Force on Immigration headed by Secretary of State Colin Powell and Attorney General John Ashcroft. Talk of the Nation (National Public Radio Broadcast July 23, 2001.) See also Michelle Mittelstadt and Alfredo Corchado, In the Immigration War, a Battle Over the Word Amnesty, Dallas Morning News, August 6, 2001. Gary Martin, Emigres' Safety is Key In Talks, Worker Plan Discussed, San Antonio Express News, August 10, 2001, at 1A.
- 3 Lok v. I.N.S., 548 F.2d 37, 38 (2d Cir. 1977).
- 4 Castro-O'Ryan v. I.N.S., 821 F.2d 1415, 1419 (9th Cir. 1987).
- 5 The rules respecting qualification of organizations, requests for recognition, withdrawal of recognition, and

accreditation of representatives entitled to represent individuals in matters before the Immigration and Naturalization Service and/or the Immigration Courts and Board of Immigration Appeals may be found at 8 C.F.R. § 292.2. The Executive Office of Immigration Review maintains an on-line list of persons entitled to represent individuals in matters before the Immigration and Naturalization Service and/or the Immigration Courts and Board of Immigration Appeals. See <<http://www.usdoj.gov/eoir/statspub/rarosterr.htm>> (as of January 17, 2002). The EOIR also maintains a site listing "Suspended and Expelled Practitioners." See < (as of January 17, 2002).

- 6 Emily Wilson, Beware of Rogue Immigration Consultants, The Ethnic NewsWatch, AsianWeek, April 25, 2001, Vol. 22, No. 35, at 13.
- 7 Unlawful Practice Hits Vulnerable Immigrants, California State Bar Journal, November 2001, at 1.
- 8 Chinta Strausberg, City Charges 14 with Immigration Consultants with Fraud, March 3, 2001, The Ethnic Newswatch, Chicago Defender, Vol. XCV, No. 210, at 10. Illegal Immigrants Warned to Be Aware of Fraud, March 14, 2001, The Ethnic Newswatch, New York Voice, at Vol. 42, No. 47, at 5. Richmond Eustis, "Lawyer" Accused in Immigrant Scam, Fulton County (Georgia) Daily Report, January 31, 2001. See also Milagros Cisneros, H.B. Notorious Notaries, How Arizona is Curbing Notario Fraud in the Immigrant Community, 32 Ariz. St. L. J. 287 (2000) (discussing immigration consultant fraud in Arizona).
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- 10 Leticia Marquez, Bad Advice Can Cost Immigrants U.S. Residency, District Attorney Looks Into Consultants' Practices, Ventura County Star, May 2, 2001, at A01.
- 11 Edwin Garcia, Immigrants Feel Cheated by Consultants Many "Notarios" Unqualified, San Jose Mercury News, January 3, 2001, at 1A.
- 12 Robert Bach, Building Community Among

<p>Diversity: Legal Services for Impoverished Immigrants, 27 U. Mich. J. L. Ref. 639, 653 (1994) (discussing the results of a survey of impoverished immigrants source of legal assistance).</p> <p>13 Edwin Garcia, Immigrants Feel Cheated by Consultants Many "Notarios" Unqualified, San Jose Mercury News, January 3, 2001, at 1A.</p> <p>14 Id.</p> <p>15 Aaron Zitner, Immigrant Tally Doubles in Census, U.S. Has Twice as Many Undocumented Workers as Estimated, Analysts Say the Influx Helped Fuel the Economy, Los Angeles Times, March 10, 2001, at A1.</p> <p>16 The Foreign-Born Population in the United States: Population Characteristics (March 2000) <http://www.census.gov/prod/2000pubs/p20-534.pdf> (as of June 18, 2001).</p> <p>17 Id.</p> <p>18 John Gittelsohn and Minerva Canto, Shady 'Consultants' Find Their Victims Are Desperate to Attain Legal Status, Orange County Register, September 3, 2000, at A01.</p> <p>19 James Colburn, Judge Blocks Worker Seminar, San Antonio Express News, March 31, 1996, at B1.</p> <p>20 In Dallas Metroplex Spanish-language Radio a Popular Voice, The News, January 26, 1999</p> <p>21 Id.</p> <p>22 Karen Nobumoto, Destructive Deception Unauthorized Practice of Law Has Become More Harmful, More Egregious and more Blatant in California, California Law Business, January 7, 2002, at 22. See also John Gittelsohn and Minerva Canto, Shady 'Consultants' Find Their Victims Are Desperate to Attain Legal Status, Orange County Register, September 3, 2000, at A01.</p> <p>23 Cal. Bus. & Prof. Code §§ 17500, 22442.3.</p> <p>24 An attorney may practice before the Executive Office of Immigration Review and the Board of Immigration Appeals if he or she is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, of the United States, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law. See 8 C.F.R. §§ 1.1(f), 292.1(a)(1).</p> <p>25 Legislation enacted in 2000 requires immigration attorneys who are members of</p>	<p>the California State Bar to include a statement that he or she is an active member of the State Bar, licensed to practice law in this state in advertisements published, distributed, or broadcasted by or on behalf of a member seeking professional employment for the member in providing services relating to immigration or naturalization. Cal. Bus. & Prof. Code, § 6157.5, subd. (a). A violation of this section by a member shall be cause for discipline by the State Bar. Cal. Bus. & Prof. Code, § 6157.5, subd. (d).</p> <p>Although this provides consumers with an important disclosure in advertising regarding an attorney's California State Bar membership status, members of state bars other than California do not appear to be subject to this requirement.</p> <p>26 John Gittelsohn and Minerva Canto, Shady 'Consultants' Find Their Victims Are Desperate to Attain Legal Status, Orange County Register, September 3, 2000, at A01.</p> <p>27 Id.</p> <p>28 For an article discussing recent efforts to make processing more efficient, see Michael D. Patrick, Immigration Law Premium Processing Program: Speeding Applications, New York Law Journal, August 8, 2001, at News. See also Richard Stina, Several Factors Impede Timeliness of Application Processing, United States General Accounting Office Reports, Report Number GAO-01-488, May 4, 2001. See also Michael D. Patrick and Careen B. Shannon, Adjustment of Status, or Immigrant Visa Processing?, New York Law Journal, November 22, 1999, at 3.</p> <p>29 Edwin Garcia, Immigrants Feel Cheated by Consultants, Many "Notarios" Unqualified, San Jose Mercury News, January 3, 2001, at 1A. Unlawful Practice Hits Vulnerable Immigrants, California Bar Journal, November 2001, at 1.</p> <p>30 Edwin Garcia, Muchas quejas por fraude migratorio: Gran numero de personas son victimas de abogados y notarios inescrupulosos por las ansias de arreglar sus documentos, Ethnic NewsWatch, La Opinion, August 11, 2001, at 3A</p> <p>31 Gail Appleton, Unscrupulous Notaries Spur Chicago Probe, 68 A.B.A. J. 1357 (1986).</p> <p>32 Edwin Garcia, Immigrants Feel Cheated by Consultants, Many "Notarios" Unqualified, San Jose Mercury News, January 3, 2001, at 1A.</p> <p>33 John Gittelsohn and Minerva Canto, Shady</p>	<p>'Consultants' Find Their Victims Are Desperate to Attain Legal Status, Orange County Register, September 3, 2000, at A01.</p> <p>34 Id.</p> <p>35 Ramon Coronado, Attorneys, State Target Immigrants' Consultants, Shady Practitioners Ruin the Dreams of Some Trying to be in the United States Legally, Sacramento Bee, January 5, 2001.</p> <p>36 I handled dozens of immigration consultant fraud cases while I was a staff attorney and National Association of Public Interest Law fellow at Public Counsel Law Center in Los Angeles, California. My fellowship project addressed immigration consultant fraud in the Latino communities of Los Angeles. This case study is a summary of one such example. To protect the privacy of the persons involved, their names have not been included.</p> <p>37 The State Bar of California regulates California attorneys relationships with non-attorneys. For example, attorneys that work with immigration consultants shall not aid the immigration consultant in the unauthorized practice of law (Cal. Professional Rule of Conduct 1-300) or form a partnership with an immigration consultant who is not a lawyer if any of the activities of that partnership constitute the practice of law (Cal. Professional Rule of Conduct 1-310). California attorney can also be disciplined for failing to act competently (Cal. Professional Rule of Conduct 3-110) and failing to avoid interests adverse to a client (Cal. Professional Rule of Conduct 3-300).</p> <p>38 Some victims of fraud reported meeting with individuals at immigration consultant offices advertised as "law offices" who claim to be "attorney representatives" or who purport to be "assistants to the attorney." However, victims report that they never met the purported "attorney" despite requests for a meeting. Victims receive all of the legal advice and assistance from these so-called "attorney representatives." Others reported that the immigration consultant had instructed the client to appear at scheduled immigration court hearings and to request a continuance of the hearing date based on the pretext that the client needed time to obtain legal representation. The immigration consultant advised the client to make this request in successive continued hearings. Eventually, the immigration consultant collected several hundred dollars from the</p>
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client to obtain court representation. On the day of the hearing, the immigration consultant would pay the attorney, sometimes in the hallway outside the courtroom, to appear on behalf of the immigration consultant's client whom the attorney has never met or spoken to regarding the facts of his or her particular case. Sometimes, the client was instructed to pay the attorney directly. In either case, the immigration consultant handed the client's case file to the attorney for a cursory review.

The immigration attorney accepted the money and, after quickly reviewing their paperwork, represented the client in the court hearing. In cases of a denied frivolous political asylum application, the attorney advised clients that their immigration cases was unsuccessful, and directed the client to request voluntary departure from the United States. The attorney's representation of the immigration consultant fraud victim lasted no longer than the time it takes a judge to conduct an immigration hearing.

39 Another common complaint among immigration consultant fraud victims was the immigration consultant's retention of the original documents belonging to a client. When the client became suspicious that the immigration consultant was defrauding them, they were afraid to confront the immigration consultant for fear that he or she would destroy the original documents that they have in their possession. Original documents, such as expired work permits and utility bills, can be used as evidence of presence in the country when certain forms of immigration relief requires such proof. In some cases, the immigration consultant retained complete control over the client's submitted applications and correspondence issued by the INS. Immigration consultants fraud victims were routinely not given copies of the forms completed on their behalf and submitted to the INS. This left the client with no information regarding the type of relief they applied for, which resulted in having to request the information from the agency through a Freedom of Information Act Request. Immigration consultants would even substitute their own business addresses on forms for that of the applicant's mailing address in order to control the client's access to information regarding their

immigration petitions.

- 40 Fraudulent immigration consultants engage in high pressure sales tactics, such as convincing consumers that deadlines are approaching to obtain immigration relief and that they must contract with them or lose out forever on this last opportunity to regularize their status. In these cases, while a real deadline for the filing of immigration paperwork may be imminent for a particular group of people meeting basic filing requirements, the deadline may not necessarily apply to the consumer, a fact not disclosed by the immigration consultant. Other immigration consultant convince their customers that the speed of their attainment of legal permanent residency is directly correlated to the amount of time it takes them to pay the full balance of their contract price, citing that the INS works faster if they pay their money faster.
- 41 See 8 U.S.C. §§ 1158, 1225 (2001) for federal statutes regarding political asylum.
- 42 Letisia Marquez, *Bad Advice Can Cost Immigrants U.S. Residency*, District Attorney looks into consultants' Practices, *Ventura County Star*, May 2, 2001, at A01. See also Rosa Macias and Rigoberto Macias v. Gaston Corral dba Consultorio International, *Ventura Superior Court Case Number SH086894*.
- 43 Assembly Floor, Committee Analysis of AB 2520 (1994-1995 Reg. Session) June 2, 1994, p. 2.; cf. *In re Bachmann* (Banks. S.D. Fla. 1990) 113 B.R. 769, 773 (when determining what activities constitute nonlegal advice the court must consider the protection of the public).
- 44 *Id.*; see also DiRado, *Scams Victimize Mexicans Who Seek Work Permits; Immigrants: Thousands Have Been Duped by Consultants Who Promise Employment Papers but Actually Submit Bogus Political Asylum Claims*, *L.A. Times*, page 13, (Dec. 2, 1993) (describing how unethical immigrant consultants obtain temporary work permits for their clients by filing false political asylum claims which are usually rejected later).
- 45 Cal. Bus. & Prof. Code, § 22441, subd. (a).
- 46 See California Business and Profession Code sections 22441 (defining an immigrant consultant as a person who gives nonlegal assistance or advice regarding an immigration matter) and 22442.2-22442.4 (setting forth the requirements for a person acting as an immigration consultant). For examples of what constitutes permissible

nonlegal advice, see *In re Bachmann*, supra, 113 B.R. 769, 773 (when determining what activities constitute nonlegal advice, the court must consider the protection of the public); *People v. Landlord Professionals Serv.*, 215 Cal.App.3d 1599 (1989) (holding that performing clerical functions and giving a client a detailed manual regarding unlawful detainer constituted nonlegal advice). See generally, *Review of Selected 1994 California Legislation* (1995) 26 Pacific L.J. 202, 360-361.

- 47 Cal. Bus. & Prof. Code § 22440. See 8 U.S.C. § 1551 (establishing the INS); 8 C.F.R. §§ 1-499 (2001) (setting forth the powers and duties of the INS); 8 C.F.R. §§ 3.1-3.8 (2001) (setting forth the powers, duties and authority of the Board of Immigrant Appeals); 8 U.S.C. § 1362 (stating that persons have a right to counsel at an exclusion or deportation proceeding). See generally, *Review of Selected 1994 California Legislation* (1995) 26 Pacific L.J. 202, 360-361.
- 48 The Secretary of State maintains a web site which provides a listing of immigration consultants who have bonds on file with that office. See <(as of January 17, 2002).
- 49 Cal. Bus. & Prof. Code, § 22443.1, subd. (a).
- 50 Cal. Bus. & Prof. Code, § 22447, subd. (a).
- 51 Cal. Bus. & Prof. Code, § 22442; Cal. Code of Regulations, tit. 16, § 3840 (2001).
- 52 *Id.*
- 53 It is also misdemeanor for any person for compensation to knowingly make a false or misleading material statement or assertion of fact in the preparation of an immigration matter which statement or assertion is detrimentally relied upon by another. Such a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both. Cal. Penal Code, § 653.55.
- 54 Cal. Bus. & Prof. Code § 22444.
- 55 Cal. Bus. & Prof. Code § 22442.2, subd. (a)(1)-(2).
- 56 Cal. Bus. & Prof. Code § 22443.
- 57 Cal. Bus. & Prof. Code § 22442.3.
- 58 Cal. Bus. & Prof. Code § 22445, subd. (a).
- 59 Cal. Bus. & Prof. Code § 22445, subd. (b).
- 60 Cal. Bus. & Prof. Code § 22445, subd. (c).
- 61 Cal. Bus. & Prof. Code § 22448.
- 62 Edwin Garcia, *Immigrants Feel Cheated by Consultants, Many "Notarios" Unqualified*, *San Jose Mercury News*, January 3, 2001, at 1A.

- 63 Id.
- 64 Cal. Bus. & Prof. Code § 22441.
- 65 The “practice of law” is generally defined as “doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure. But in a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court. [. . .] In close cases, the courts have determined that the resolution of legal questions for another by advice and action is practicing law “if difficult or doubtful legal questions are involved which, to safeguard the public, reasonably demand the application of a trained legal mind.”” *Baron v. City of Los Angeles*, 2 Cal. 3d 535, 541-42 (1970). For example, in deciding whether an unlawful detainer assistant service was engaged in the unauthorized practice of law, the appellate court in *People v. Landlords Professional Services*, 215 Cal. App. 3d 1599, 1608 (1989), found that such services do not amount to the practice of law as long as the service offered by [the unlawful detainer assistant service] was merely clerical, i.e., the service did not engage in the practice of law if it made forms available for the client’s use, filled the form in at the specific direction of the client and filed and served those forms as directed by the client. Likewise, merely giving a client a manual, even a detailed one containing specific advice, for the preparation of an unlawful detainer action and the legal incidence of an eviction would not be the practice of law if the service did not personally advise the client with regard to a specific case. The court further commented: “The advertisement used by LPS implies its eviction services were not limited to clerical functions. The tenor of the advertisement was that the service accomplished evictions. The advertisements’ statement “Call & talk to us” was a general invitation for clients to discuss the matter of eviction with LPS. Bill Watts’ LPS business card listed his title as “Counselor.” In short, LPS cast about itself an aura of expertise concerning evictions.” Id. at 1608.
- 66 In addition to persons, a corporation can not practice law nor hire attorneys to carry on business of practicing law for it. *People ex rel. Los Angeles Bar Ass’n v. California Protective Corp.*, 76 Cal. App. 354 (1926). A corporation or any other unlicensed person or entity cannot engage, directly or indirectly, in learned professions, such as the practice of law. *Masters v. Board of Dental Examiners of California*, 10 Cal. App. 2d 592 (1936).
- 67 Cal. Bus. & Prof. Code § 6126, subd.(a). See *In re Anderson*, 79 B.R. 482, 485 (Bankr. S.D. Cal. 1987) (holding that a paralegal giving extensive bankruptcy advice constituted legal advice and was therefore an unauthorized practice of law).
- 68 Cal. Bus. & Prof. Code § 6155(a).
- 69 Id.
- 70 Id.
- 71 Cal. Bus. & Prof. Code § 6155. The State Bar of California lists certified lawyer referral services on its web site at <<http://www.calbar.org/2con/referral.htm>> (as of January 18, 2002).
- 72 Cal. Bus. & Prof. Code, § 22441.
- 73 Cal. Bus. & Prof. Code, § 22444, subd. (d).
- 74 Id.
- 75 Cal. Bus. & Prof. Code, § 17500.
- 76 Guillermo Contreras, *A Golden Cage*, *Albuquerque Journal*, July 15, 2001, at A1.
- 77 The Office of Immigrant Assistance of the California Attorney General’s Office has the pamphlet, “Immigration Services How to Protect Your Consumer Rights,” available on-line at <<http://caag.state.ca.us/immigrant/publications/ImmAsst-English.pdf>> (as of January 21, 2002). This pamphlet, available in several different languages, educates consumers about their rights as immigration consultant clients to demand written contracts, copies of bonding information from immigration consultants, and to demand return of their original documents.
- 78 For an example of instructions on how to sue an immigration consultant in small claims court, see the Immigration Law Resource Center’s (“ILRC”) web site at <<http://www.ilrc.org/source/smallclaimcte.pdf>> (as of January 18, 2002). A handbook “Immigration Consultant Fraud: Law and Resources” by Kathy Brady is also available from the ILRC.
- 79 The State Bar of California has the pamphlet, “How Can I Find And Hire The Right Lawyer” available on-line at < (as of January 18, 2002).
- 80 Ramon Coronado, *Attorneys, State Target Immigrants’ Consultants*, *Sacramento Bee*, January 5, 2002.
- 81 Michelle Dizon *Easy Marks INS Tries to Help, but Critics Attack its New Whistle-blower Program*, *New Times Los Angeles*, September 6, 2001, at News & Features/Columns. See also *Immigration Fraud Targeted in Law Enforcement Sweep*, *City News Service*, March 20, 2001.
- 82 Edwin Garcia, *Immigrants Feel Cheated by Consultants, Many “Notarios” Unqualified*, *San Jose Mercury News*, January 3, 2001, at 1A.
- 83 Id.
- 84 Karen Nobumoto, *Destructive Deception Unauthorized Practice of Law Has Become More Harmful, More Egregious and More Blatant in California*, *California Law Business*, January 7, 2002, at 22.
- 85 Id.
- 86 Edwin Garcia, *Immigrants Feel Cheated by Consultants, Many “Notarios” Unqualified*, *San Jose Mercury News*, January 3, 2001, at 1A. *Unlawful Practice Hits Vulnerable Immigrants*, *California Bar Journal*, November 2001, at 1.
- 87 Cal. Bus. & Prof. Code, §§ 22445, 22446.5.
- 88 Ramon Coronado, *Attorneys, State Target Immigrants’ Consultants, Shady Practitioners Ruin the Dreams of Some Trying to be in the United States Legally*, *Sacramento Bee*, January 5, 2001. See *Ramon Tapia, Jr. et al. v. Ramiro Alcala et al.*, *Monterrey County Superior Court* Number 111599.
- 89 A description of the Los Angeles County Mexican-American Bar Association’s Committee Against the Unauthorized Practice of Law is available on-line at < (as of January 21, 2002). For information on the Southern California Chinese Lawyers Association’s Unauthorized Practice of Law Committee visit < (as of January 21, 2001).
- 90 Michelle Mittelstadt and Alfredo Corchado, *In the Immigration War, a Battle Over the Word Amnesty*, *Dallas Morning News*, August 6, 2001.

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MCLE SELF-ASSESSMENT TEST

1. A non-attorney immigration consultant may, after noting the particular circumstances of a client's background, advise the him or her about the form of immigration relief for which they qualify.
☐ True ☐ False
2. California law requires immigration consultants as a prerequisite to engaging in the business of immigration consulting to file a \$50,000 bond with the California Secretary of State.
☐ True ☐ False
3. An immigration consultant must be certified by the California State Bar as a lawyer referral service prior to collecting a fee from their clients for giving them a referral to an attorney.
☐ True ☐ False
4. An immigration consultant can translate and use of any term in advertising in any language, even if the immigration consultant knows the term may mislead a consumer into believing that the immigration consultant is an attorney.
☐ True ☐ False
5. A victim of an immigration consultant's violation of the Immigration Consultant Act may commence a cause of action against the immigration consultant within four years from the victim's discovery of the facts that constituted the violation.
☐ True ☐ False
6. Immigration consultants may fill out immigration forms selected by the client with information provided by the client.
☐ True ☐ False
7. Immigration consultants can charge and collect a referral fee from clients for a referral to an attorney chosen by the immigration consultant to provide legal representation in the immigration court for the client.
☐ True ☐ False
8. An immigration consultant who violates the Immigration Consultants Act is subject to a civil penalty not to exceed \$100,000 for each violation, to be assessed and collected in a civil action brought by any person injured by the violation.
☐ True ☐ False
9. Certain violations of the Immigration Consultants Act may be charged as misdemeanors. A second or subsequent violation of the Immigration Consultants Act is a misdemeanor and potential felony subject to imprisonment in state prison.
☐ True ☐ False
10. The California Secretary of State is charged with managing Immigration Consultants bonds.
☐ True ☐ False
11. An attorney may own, but not operate, a lawyer referral service as long as that referral service makes 30 percent of the total referrals to the attorney.
☐ True ☐ False
12. Immigration consultants who ask clients questions about their legal status and collect other facts on which they base the opinion they communicate to the client regarding the form of immigration relief the client should be applying for are engaging in the unauthorized practice of law.
☐ True ☐ False
13. A business or individual who operates for the direct or indirect purpose, in whole or in part of referring potential clients to attorneys must be certified by the State Bar of California.
☐ True ☐ False
14. It is a misdemeanor for any person who intends on performing any type of services to make or disseminate or cause to be made or disseminated any statement concerning those services which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading in any newspaper or other publication, radio station, advertising device, or in any other manner or means whatever.
☐ True ☐ False
15. An attorney may accept referrals of potential clients from individuals who are not registered with the State Bar of California.
☐ True ☐ False
16. A prevailing plaintiff who has filed a civil action pursuant to the Immigration Consultants Act shall recover his or her attorneys' fees and costs.
☐ True ☐ False
17. The ICA permits a person who is awarded damages in a civil action for injuries caused by a person's violations of the ICA to recover damages from the \$50,000 bond immigration consultants are required to file with the California Secretary of State.
☐ True ☐ False
18. Immigrant consultants must conspicuously display information in their offices that includes the consultant's full name and address, evidence of compliance with any bonding requirement, and a statement, in the language of the immigration consultant's clientele, that the consultant is not an attorney.
☐ True ☐ False
19. The Immigration Consultants Act permits non-attorney immigration consultants to advise clients of the differences between various forms of immigration benefits, assess the client's individual facts and, on the basis of the client's facts, form and communicate an opinion as to the form of relief for which their client qualifies.
☐ True ☐ False
20. It is unlawful for an immigration consultant to make false or misleading statements to a client while providing services to that client, make any guarantee or promise to a client, unless the guarantee or promise is in writing and the immigration consultant has some basis in fact for making the guarantee or promise, or make any statement that the immigration consultant can or will obtain special favors from or has special influence with the INS.
☐ True ☐ False

The Sky's TheLimit?

Airport Security and Racial, Ethnic and Religious Profiling

By Shan K. Thever, Esq., and Jeremy G. March, Esq.

Introduction

Flying home from a holiday vacation last week, one of the authors of this article became the randomly inspected person selected by airport security personnel. When he bought the ticket he was “random” and when he was about to go on board he was once again “random.” There were several people in this category, only non-whites. Invariably the ones who were assigned to choose these random inspections were in both instances young white males. The author became concerned about the lack of diversity in the selection of those who must make decisions on random inspections in our airports.

This was not an isolated incident. In the last few months, numerous individuals of Arab or near-Eastern descent have been subject to aggressive inspection at airports or even barred from getting on their flights. Indeed, shortly before the New Year, one of President Bush's own secret service bodyguards, of Arab descent, was barred from a commercial flight because the pilot raised questions about his identity.¹ President Bush reportedly said that he would be “mad as heck” if the agent was thrown off simply because of his ethnic background.²

Airport security has become a national priority in the wake of the September 11 hijackings and the resulting attacks on the World Trade Center and the Pentagon. The Aviation and Transportation Security Act,³ signed into law less than two months in response to the crisis, creates a new Transportation Security Administration (“TSA”) within the U.S. Department of Transportation. TSA's responsibilities include security of civil aviation; security screening operations for passenger-air and interstate-air transportation; promulgating and enforcing security-related regulations and

requirements for air travel and other modes of transportation; and developing, coordinating and carrying out plans to prevent and deal with threats to transportation security.⁴

What sort of security regulations and programs will these be? While aimed at keeping terrorists off commercial flights, will they be enforced in a manner that ejects or needlessly harass innocent customers of Muslim or near-Eastern backgrounds?

As discussed below, “racial profiling” – search or seizure of persons as suspects largely or entirely because of their ethnic or racial background or appearance – has been largely condemned by the Supreme Court and the Ninth Circuit as a violation of the Fourth Amendment. Policymakers, law enforcement officials, and prosecutors who craft and enforce TSA regulations should be familiar with the major cases on racial profiling, so as to better understand the limits of their authority in ensuring security in our airports.

The first part of this article reviews some of the sociological and legal problems posed by racial profiling. Then we examine the major Supreme Court and Ninth Circuit cases regarding its use. The third part of the article offers some practical suggestions for airport security planners and officials for better protecting the public while avoiding legal problems. Finally, we consider whether the courts should permit the expanded use of racial, ethnic or religious profiling (in this case, profiles which include a person's perceived Arabic or near-Eastern ancestry or affiliation with Islam) in view of current national security concerns. We close by recommending that racial profiling would cause unnecessary confusion and inconvenience for both innocent travelers and airport security personnel.

What's wrong with racial profiling?

In *United States v. Montero-Camargo*, the Ninth Circuit Court of Appeals noted that a significant body of research shows that race is routinely and improperly used as a proxy for criminality, and is often the defining factor in decisions by police to detain, search, or even arrest potential suspects.⁵ These studies are well documented in law and criminology review articles.⁶

The Montero court acknowledged the social and psychological harm caused by racial profiling: “Stops (by police of suspects) based on race or ethnic appearance sends the underlying message to all our citizens that those who are not white enjoy a lesser degree of constitutional protection – that they are in effect assumed to be potential criminals first and individuals second.”⁷

This misuse of profiling, at its resulting consequences for relations between the police and the community, is well-known to top law enforcement administrators. New Jersey's Attorney General, for example, observed that racial profiling, and resulting disparate treatment of minorities, “engender[s] feelings of fear, resentment, hostility and mistrust by minority citizens.”⁸ This, in turn, leads to a deterioration in relations between police and the communities that they serve.⁹

Racial profiling may also have adverse legal consequences for the public officials and agencies engaged in such practices. Alleging that large numbers of minorities are victims of discrimination because of an agency's profiling practices may be sufficient to support a discriminatory-intent claim for damages and a discriminatory-impact claim for equitable relief under Title VI of the 1964 Civil Rights Act.¹⁰ Even if agencies' policies or supervisors' instructions do not specifically require or allow racial profiling, supervisors may still be liable for their subordinates' use of profiling if they are aware of such conduct but failed to stop it.¹¹ Evidence obtained pursuant to a search or seizure based on racial profiling may be excluded for lack of probable cause.¹²

Thus, airport racial profiling may not only create a second-class status for some passengers, but may also escalate litigation costs for governmental agencies at a time when such resources must be targeted to fight terrorism.

When may racial and ethnic appearance be considered?

An investigative stop of a suspect by a law enforcement officer requires a reasonable, articulable suspicion that a person has committed, or is about to commit, a crime.¹³ To what extent, though, can someone's ethnic background, real or perceived, figure in the officer's suspicions? Essentially, the courts have answered that while it may be considered by the officer together with other factors, it may not be the only factor.

In the 1975 case, *United States Brignoni-Ponce*, the U.S. Supreme Court held that consideration of racial or ethnic appearance alone cannot furnish a reasonable articulable suspicion passing muster under the Fourth Amendment. The United States Supreme Court has held that consideration of racial appearance alone cannot furnish a reasonable, articulable suspicion of the type needed to allow a search or seizure under the Fourth Amendment.¹⁴ In *Brignoni*, police officers had stopped a car which they believed was transporting illegal aliens from Mexico to the United States. They relied on one single factor in deciding to stop the car: The apparent Mexican ancestry of the driver and passengers. The court held that this did not, by itself, furnish reasonable grounds to believe that the occupants were illegal aliens. Even if the officers were justified in concluding that the occupants were of Mexican descent, this would not by itself justify a reasonable belief that they were themselves illegal aliens or that other illegal aliens were concealed in the car. Large numbers of American citizens, noted the Court, have physical characteristics identified with Mexican ancestry. While the likelihood that a given person of Mexican ancestry is an illegal alien is high enough to make Mexican appearance a relevant factor, it is not enough, by itself, to justify stopping a person to ask if they are an illegal alien.¹⁵

Several Ninth Circuit cases hold, consistent with *Brignoni*, that a person's racial or ethnic appearance may rightly be considered along with other factors in forming a reasonably articulable suspicion. Specifically, these cases have held that while racial appearance alone is not enough to warrant an investigative stop, it can be a relevant factor on which a law enforcement agent may rely in the context of other circumstantial elements. These other elements include the suspect's established height, age, location, and other factors that establish "parallelism" between the detainee and a previously described suspect.¹⁶ Similarly, the Ninth Circuit held in *U.S. v. Montero-Camargo*, discussed above, that racial or ethnic

appearance may be considered where the suspected perpetrator of a specific offense has been identified as having such an appearance. Even in such a situation, however, law enforcement officials cannot stop and question persons of a particular racial or ethnic group unless there are other individualized or particularized factors which, taken together with the racial or ethnic appearance, create reasonable suspicion or probable cause.¹⁷



Practical suggestions for airport security

Distinguish between searches and seizures and more "casual" security actions. The above cases all presume that the officer has done something constituting an investigative stop or other search or seizure bringing Fourth Amendment protections into play. Officials drafting airport security regulations or programs must thus distinguish carefully between actions (such as detaining someone and opening their luggage) which arguably constitute a search or seizure and others (such as watching someone or asking casual questions) which do not.

Whether an encounter between an individual and law enforcement authorities constitutes an investigative stop triggering Fourth Amendment protections and questions, including those relating to reasonable suspicion and profiling, is a mixed question of fact and law subject to *de novo* review.¹⁸ Questioning by law enforcement officers constitutes an investigative stop only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to

leave.¹⁹ As noted in *Florida v. Royer*, discussed above, law enforcement officers do not implicate the Fourth Amendment where they simply approach someone on the street or ask them if they are willing to answer some questions.²⁰ Likewise, simply approaching a person in a public place and asking them a question does not constitute a seizure.²¹

Thus, airport security may be able to casually approach individuals and ask them simple questions – or ask if they are willing to answer more questions – solely on the basis of their appearance. Anything which would cause a reasonable person to believe that they are not free to refuse or leave, however, is subject to the restrictions of *Brignoni-Ponce* and related cases and must be handled much more carefully. These latter actions might include asking a person to step out of line, to accompany a guard to a security office. They might also include any interaction in which airport security staff is brandishing a weapon of any kind.

For investigative stops, do not consider racial or ethnic appearance, or perceived religious affiliation, except in concert with other factors. *Brignoni-Ponce* will not allow an investigative stop, or other search or seizure, based entirely on the perception that someone belongs to a particular ethnic group or race. Thus, a lawsuit could result if an individual or group was stopped or detained simply because they looked Arabic or near-Eastern. Such a stop could be justified, however, if the security officers had previously received photographs or descriptions of actual or suspected terrorists, who happened to be Arabic or near-Eastern, and then stopped only those persons who seemed to closely match several points in the description (say, height, build, scars, or facial hair). Security staff should keep written records of any such stops, and include specific reference to the factors, other than perceived race or ethnicity, which caused them to become suspicious.

Are racial, ethnic or religious profiling justified in view of the national emergency?

Of course, *Brignoni-Ponce*, *Kim*, and the other cases cited above were decided long before the attack on the United States. The courts recognize that certain civil liberties may be curtailed in times of war or attack. In *Hirabayashi v. United States*,²² for example, the Court allowed military curfew and segregation to be used against Japanese-Americans on the grounds that the United States was at war with Japan, and in

Korematsu v. United States²³ used the rationale to uphold the exclusion of persons of Japanese ancestry from the West Coast.

Use of racial, ethnic or religious profiling to single out persons for questioning at an airport is obviously less extreme than using it to intern them for the duration of a war. Assuming, however, that the exigency of war made the use of racial, ethnic or religious profiling constitutional, would it be desirable or practical to do so? In reversing Hirabayashi's convictions in 1987, the Ninth Circuit noted that the Hirabayashi and Korematsu rulings "never occupied an honored place in our history." The curfew and exclusion orders, said the Court were based on racial stereotypes and not on any reasonable military assessment of an emergency.²⁴ Subsequently, the Federal government decided on its own to pay reparations to the interned Japanese-Americans, despite the Hirabayashi and Korematsu decisions which stated that the internments were legal and making reparations presumably unnecessary. These later rulings and reparations mean that the country, on the whole, profusely regretted the internments. Many of the restrictions on free speech imposed during the McCarthy Era are now similarly regarded as unnecessary at best and embarrassing to the government and harmful to many innocent people at worst. Once the War on Terrorism is over, Americans might regret actions – even ones on a far smaller scale than internment or censorship – they took against persons just because they appeared to be from the Near East.

Even if public policy deemed profiling by airport security a useful tool in the war on terrorism, of what would the profile consist? A law or regulation allowing guards to use their intuition or subjective prejudices as to which racial, ethnic or religious groups were "dangerous" and could thus be detained for questioning would certainly be struck down as vague and overbroad. An explicit, written profile would have to be constructed, but it is not clear what racial, ethnic, or religious characteristics it could justifiably include.

Ideally, the profile would include all members of Al Qaeda or similar terrorist organizations, as well as persons sympathetic to them who might take violent action while on a flight. But this is an extremely diverse, if small, group of people. Many people assume that Osama bin Laden and his followers are all Arabs, and that it would thus be appropriate or sufficient to detain Arabs for questioning. True, bin Laden and many Al Qaeda members are from Saudi Arabia,

but the organization reportedly also includes members, Arabic and otherwise, from perhaps a dozen other countries. Detaining persons with "Arabic" appearance or names – assuming airport security officers could tell them apart, at a glance, from Israelis, Turks, or other persons from the Middle East or other warm climates – would thus be inadequate. Broadening the profile, however, could lead to still more trouble. If the profile were expanded to include people who resemble Afghans, Persians, or from other countries with Islamic regimes hostile to the U.S., would airport security be able to distinguish these people from ethnic Kazakhs, Uzbeks, Turkmenians, and Tajiks – all of whose mother countries have assisted the U.S. in our war on terrorism? Broadening the profile to include all Muslims could lead to complete confusion, since Islam has over a billion followers represented in every race on Earth. Anyone may look like a Muslim.



One possible solution would be to examine the passports of all persons in an airport, and then automatically subject to further questioning or inspection any person carrying a passport either issued by or bearing endorsements from a country hostile or unsympathetic to the United States. If our concern is with Saudi, Iraqi, or Afghan militants, airport security will at least know if the visitor is from or has recently visited, Saudi Arabia, Iraq, or Afghanistan. This would arguably be more efficient and fairer than detaining or questioning people on the basis of their perceived race, ethnicity, or religion. Such a system would cause the least inconvenience to American citizens, who carry American passports and rarely visit the hostile countries in question.

Conclusion

The U.S. Supreme Court and the Ninth

Circuit allow law enforcement officials, when formulating a decision to stop or search someone, to consider that person's perceived racial or ethnic background only in conjunction with other factors. Anyone involved in drafting or enforcing future TSA airport security regulations must keep this in mind. Even if the courts were to allow greater use of racial, ethnic, or religious profiling in view of the national emergency, doing so may be impractical as well as unnecessarily harmful to innocent people.

Endnotes

- 1 Garvey, Megan, Response to Terror : Pilot's Concern Keeps Federal Agent Off Flight, Los Angeles Times, December 28, 2001.
- 2 Id.
- 3 P.L.107-71, codified as 49 U.S.C. § 114 et seq.
- 4 49 C.F.R. § 1.4(n).
- 5 United States v. Montero-Camargo , 208 F.3d 1122, 1135, n. 24 (9th Cir. 2000).
- 6 See Anthony C. Thompson, Stopping the Usual Suspects : Race and the Fourth Amendment, 75 N.Y.U.L. Rev. 965, pp. 1-3 (1999); Sean Hecker, Race and Pretextual Traffic Stops : An Expanded Role for Civilian Review Boards, 28 Colum. Hum. Rts. L. Rev. 551, 554-71; David A. Harris, The Stories, The Statistics, and the Law : Why "Driving While Black" Matters, 84 Min. L. Rev. 265 (1000); and David A. Harris, "Driving While Black" and All Other Traffic Offenses : The Supreme Court and Pretextual Traffic Stops, 87 Crim. L. & Criminology 544, 559-71 (1997).
- 7 Montero-Camargo, 208 F.3d at 1135.
- 8 See Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling, April 1999, p. 47.
- 9 See, Report of the Independent Commission on the Los Angeles Police Department, 1991, p. 69.
- 10 Rodriguez v. California Highway Patrol et al., 89 F.Supp.2d 1131, 1139 (N.D. Cal. 2000, citing Maryland State Conference of NAACP Branches v. Maryland Dept. of State Police, 72 F.Supp.2d 560, 566-68 (N.D. Md. 1999).
- 11 Rodriguez, at 1137, citing Larez v. City of Los Angeles (9th Cir. 1991) 946 F.2d 630, 646; Bergquist v. County

of Cochise, 806 F.2d 1364, 1367 (9th Cir. 1986); and City of Canton v. Harris, 489 U.S. 378, 388 (1989).
 12 United States Brignoni-Ponce, 422 U.S. 873 (1975).
 13 Florida v. Royer, 460 U.S. 491, 497 (1983).
 14 United States Brignoni-Ponce, 422 U.S. 873 (1975).
 15 422 U.S. at 885-887.
 16 United States v. Bautista, 684 F.2d 1286, 1289, cert. den. 459 U.S. 1211 (1982); United States v. Kim, 25 F.3d 1426, 1431 (1994); United States v. Ward, 2001 U.S.App.Lexis 19554 (2001).
 17 208 F.3d at 1134, n. 22.
 18 United States v. Kim, 25 F.3d 1426, 1430; see also U.S. v. Alvarez, 899 F.2d 833, 836, cert. den. 489 U.S. 1024 (9th Cir. 1990).
 19 United States v. Kim, 25 F.3d 1426,

1430; INS v. (1944) Delgado, 466 U.S. 210, 215 (1984); U.S. v. Mendenhall, 446 U.S. 544, 554 (1980).
 20 460 U.S. at 497.
 21 United States v. Kim, 25 F.3d 1426, 1430, note 1 [citing LaFave, 3 Search and Seizure Sec. 9/2(h), 408-09 (2nd Ed., 1987)].
 22 Hirabayashi v. United States, 320 U.S. 81(1943).
 23 Korematsu v. United States 323 U.S. 214 (1944).
 24 Hirabayashi v. United States, 828 F.2d 591 (9th Cir. 1987).

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PUBLIC LAWYER OF THE YEAR AWARD 2002

Do you know a public law practitioner who deserves special recognition because of outstanding services to the public?

If so, that person could be the recipient of the Public Law Section's "2002 Outstanding Public Law Practitioner" award because of your nomination.

Each year the Public Law Section honors a public lawyer selected by the Public Law Executive Committee from nominations sent in by members of the Public Law Section, the State Bar, and the public at large.

For the award, the Public Law Executive Committee is looking for an active, practicing public lawyer who meets the following criteria:

1. At least 5 years of recent, continuous practice in public law
2. An exemplary record and reputation in the legal community
3. The highest ethical standards

Rather than a political figure or headliner, the ideal recipient would be a public law practitioner who has quietly excelled in his or her public service. Just as the Public Law Executive Committee supports the goal of ethnic diversity in the membership and leadership of the State Bar, a goal in selecting the 2002 Outstanding Public Law Practitioner will be to ensure that the achievements of all outstanding members of the Bar who practice Public law, especially women and people of color, are carefully considered.

Nominations are now being accepted. The 2002 Outstanding Public Law Practitioner award will be presented at the Annual State Bar Convention in San Diego in September 2002.

Send nominations, no later than 12:00 midnight, June 1, 2002, to:

Tricia Horan, Public Law Section, State Bar of California, 180 Howard Street, San Francisco, CA 94102-4498.

To nominate an individual for this award, fill out the official nomination form below.

Nominee's Name:

Nominator's Name:

Place of Business:

Telephone Number:

Years of Public Law Practice:

Brief Statement why Nominee deserves recognition:

California Authorities

Research Tips For The Public Lawyer

By Kathryn A. Lee, M.L.S.*

This bibliography is representative of resources that are most important to California attorneys in the public sector. All the resources are available in law libraries. In addition, useful Internet links have been included for online access.

Witkin Library

The four Witkin sets, Summary of California Law, California Procedure, California Evidence, and California Criminal Law, are a good starting place for California legal research. Take advantage of the Combined Index and Tables of Cases and Statutes which cover all four sets.

Cal Jur III

Encyclopedic coverage of California law - Approximately 70 volumes arranged alphabetically by topic with a multi-volume index and table of cases at the end of the set. The set is supplemented annually with pocket parts and replacement volumes. Start with the index to make sure you get to all related areas of your topic.

Annotated Codes

Annotated codes are primary sources with secondary source features. In addition to providing the actual laws, their editorial enhancements make them unbeatable for finding cases, understanding history of a law, and leading to useful secondary sources.

Deering's California Codes Annotated and *West's Annotated California Codes* are key to understanding the law. Both sets include case annotations for each code section, historical notes, and references to law reviews and

secondary sources. You may want to check both sets, because although the text of the laws should be the same, the supplemental information will vary. The West Codes' comprehensive index, shelved at the end of the set, is a very useful tool.

Treatises and Practice Guides CEB

California Continuing Education of the Bar publishes treatises and sponsors seminars on many areas of California law, including business law, civil litigation and torts, criminal law, employment law and workers' compensation, estate planning law, family law, and real property law. Many titles include forms and forms on disk are often available for an additional charge.

Rutter Group

The Rutter Group produces the most popular titles for civil procedure "how-to" in California. The California Practice Guide series, including Civil Procedure Before Trial, Civil Trials and Evidence, Civil Appeals and Writs, and Enforcing Judgments and Debts are among the most often consulted books in the library. They are very practical and include some forms.

Forms Sets

Forms sets that are more than just forms, these sets give the basics of an area of law, checklists, and then have examples of forms that would be used in that area.

California Forms of Pleading & Practice

This 55-volume set is a good place to start if you need to draft a pleading.

California Legal Forms: Transaction Guide

For information on drafting a contract or a lease agreement on a piece of property, this is a good set to begin with.

California Points and Authorities

This set will save you a lot of time in procedural matters by providing cases to support your motions.

Digests

Digests are collections of case headnotes, presented in a subject arrangement. Since the two major reporters in California have different headnotes, there are digests that correspond to each reporter. Both include state and federal cases.

New California Digest (McKinney's)

- 1850-1968

California Digest of Official Reports 3d and 4th series - 1969-present

These correspond to California Reports and California Appellate Reports, the official reporters.

West's California Digest, and West's California Digest 2d - 1850-present

These are from West's California Reporter, the unofficial reporter.

Other Useful Tools

California Style Manual 4th is like the Harvard Bluebook for California courts. It gives rules and examples of how to cite legal materials.

Legal Newspapers

Newspapers are an excellent current awareness tool, with stories about current cases, personalities, and issues of interest to California lawyers. Southern California's paper is The Los Angeles Daily Journal, and its supplement, the Daily Appellate Report (D.A.R.), provides full text of opinions of the U.S. Supreme Court, selected Ninth Circuit opinions, all California Supreme Court opinions, and published California Appellate Court decisions. These are usually published the day after the decision. The Northern California paper, The Recorder, is similar, with the California Daily Opinion Service (C.D.O.S) as its opinion supplement. Some of the Recorder's content is available free at <http://www.law.com/regionals/ca/>.

Judicial Profiles

This set contains biographies of all Superior Court, Appellate Court, Supreme

Court, and Federal judges in California. The set is divided into Northern and Southern collections. The Internet also provides biographical information on judges, but mostly for the higher courts. The California Supreme Court website <http://www.courtinfo.ca.gov/courts/supreme/justices.htm> and the California Courts of Appeal website <http://www.courtinfo.ca.gov/courts/courtsofappeal/> contain extensive biographies of their judges. The Appellate Counsellor website <http://www.appellatecounsellor.com/profiles.htm> has profiles of all Ninth Circuit judges, and of all justices of the California Supreme Court and Courts of Appeal. Law.com is building a collection of profiles of California judges written by The Recorder staff <http://www.law.com regionals/ca/onthebench/onthebench.shtml>.

Court Rules

Southern California and Court Rules - Northern California are multi-volume collections of local court rules for all courts in the area, both state and federal. The sets are updated monthly. Court Web sites are also good places to find local rules. The Judicial Council's website has links to all superior court Web sites at <http://www.courtinfo.ca.gov/courts/trial/> and California Courts of Appeal at <http://www.courtinfo.ca.gov/courts/courtsofappeal/>. The link to the California Supreme Court is <http://www.courtinfo.ca.gov/courts/supreme/>. The same site also has the California Rules of Court <http://www.courtinfo.ca.gov/rules/>.

California Legislation

The Legislative Council of California's Web site <http://www.leginfo.ca.gov/> has a wealth of information about past and current California legislation. You can search for a bill by bill number or topic for each session from 1993-94 to the current session. Each bill's record contains all versions of the bill, committee analyses and floor analyses, and the record of votes, as well as status and history.

Current legislation

If you are interested in tracking a pending bill, you can subscribe to the bill and receive e-mail updates whenever there is a change or an action. This is a very quick and easy way to keep up with events in the legislature.

Legislative intent

When a question arises about the meaning of a statute, courts look to an analysis of the documents generated when the statute was under consideration by the Legislature.

Intent is sometimes a difficult thing to discern, with the most valuable documents available only in Sacramento from the State Archives or the legislative committees. The information available on the Legislative Counsel's Web site gives you a good start on the legislative intent of bills since 1993. The Legislative Counsel's digest or the committee analyses of bills may help to clarify the intention of the legislators, and these are readily available at this site.

At the least, the information can assist you in deciding whether you need to invest in a more thorough history, usually done by a professional service that specializes in this type of analysis. Legislative Intent Service <http://www.legintent.com/> or Legislative Research Incorporated <http://www.lrihistory.com/index.htm> provide this service. Legislative Research Inc.'s Web site includes some helpful research guides on legislative history.

Open Meeting Laws

The Brown Act (Government Code sections 54950-54962) governs meetings of local government agencies. The 2001 version (still current) of the act is available at <http://caag.state.ca.us/publications/BrownAct.pdf>. Another Web site, the California First Amendment Coalition <http://cfac.org/>, has a California Attorney General's 1994 pamphlet, "The Brown Act: Open Meetings for Local Legislative Bodies," edited by Deputy Attorney General Ted Prim. The League of California Cities Munilaw Research Center offers "Open and Public III: A Guide to the Ralph M. Brown Act" at <http://www.cacities.org/doc.asp?id=518>.

The Bagley-Keene Act (Government Codes sections 11120-11132) governs meetings of state agencies. The 2001 version of the act is available at <http://caag.state.ca.us/publications/bagleykeene.pdf> (Please note that § 11126 was amended by Stats. 2001, ch.21, which is not reflected in this version).

Public Records Act

The text of the California Public Records Act (Cal. Gov't Code §§ 6250-6270) can be found by going to <http://www.leginfo.ca.gov/calaw.html>, checking the "Government Code" box and typing "6250" in the search box. Changes were made in 2001 that do not show up in some of the compiled versions of the act on the Internet. This Web site is usually one of the first to reflect the January 1 statutory changes.

The Berkeley Journalism School has an online version of a "Pocket Guide to the California Public Records Act" <http://www.journalism.berkeley.edu/Resources/FOI/pockrec.txt> -- keep in mind it is from 1994 and won't show recent changes.

Attorney Directories

The Internet offers an easy way to check on directory information for lawyers. For California lawyers, the State Bar of California Member Records Online <http://www.calsb.org/MM/SBMBRSH.PHTM> provides address, telephone, e-mail and fax numbers, date of admission to the California Bar, and undergraduate and law schools attended. For lawyers in California and beyond, the Internet version of Martindale-Hubbell <http://www.lawyers.com> and West's Legal Directory <http://directory.findlaw.com> are good choices for finding the location and background of attorneys.

Docket information

California Supreme Court and Courts of Appeal now have docket information available at <http://appellatecases.courtinfo.ca.gov/>. Select a court, and you may search by case number (Supreme Court, Court of Appeal, or trial court), by party, by attorney, or by case caption (e.g. "Smith v. Jones"). Available information includes lower court information, party and attorney names and addresses, briefing summary, docket entries, and disposition. You can request e-mail notification of specific case activity by providing a case number and e-mail address.

* Kathryn A. Lee is Librarian for the California Attorney General's Law Library in Los Angeles. She was formerly Law Librarian at Pacific Enterprises (now Sempra Energy), the parent company of Southern California Gas Company. The statements and opinions in the article are those of Ms. Lee and not necessarily those of the Attorney General or the California Department of Justice.

2002 Legislative Session Sees Governor Signatures, Vetoes and Bills Held In Committees

By Fazle-Rab Quadri, Esq.,* Chair Legislative Subcommittee

The Executive Committee monitored a number of bills during the 2001 legislative session. Brief summaries and status of the bills are included in this report. If you would like additional information such as the complete text, committee analysis, history or voting records, you may view the information on line at <www.sen.ca.gov>.

AB 192 (Canciamilla)

TOPIC: State bodies: open meetings.
STATUS: Chapter 243, Statutes of 2001.
SUMMARY: This bill reorganizes and recasts the definition of "state body" for the purposes of the Bagley-Keene Open Meeting Act.

AB 237 (Papan)

TOPIC: Eminent domain.
STATUS: Chapter 428, Statutes of 2001.
SUMMARY: This bill requires the final offer and demand, in the exercise of the power of eminent domain to acquire property for a public use, to include all elements of required compensation, including compensation for loss of goodwill, and to indicate whether or not interest and costs are included.

AB 247 (Maddox)

TOPIC: Eminent domain: houses of worship.
STATUS: Referred to Com on Jud. (2001-03-01)
SUMMARY: This bill would provide that the Eminent Domain Law may not be exercised to acquire buildings, land on which they are situated, or equipment, used exclusively for

religious worship, if they are exempt from property taxes under the California Constitution.

AB 363 (Steinberg)

TOPIC: Attorneys.
STATUS: Sen Jud. Hearing postponed. (2001-08-21)
SUMMARY: Existing law State Bar Act provides that the State Bar is governed by the Board of Governors that is authorized to formulate rules of professional conduct for persons licensed to practice law in this state. This bill would enact the Public Agency Attorney Accountability Act.

AB 436 (Chan)

TOPIC: California Environmental Quality Act
STATUS: Chapter 701, Statutes of 2001.
SUMMARY: This bill authorizes, until January 1, 2001, a focused environmental impact report for a project in the City of Oakland provided the project meets specific conditions.

AB 771 (Runner).

TOPIC: Special District: Antelope Valley Air Quality
STATUS: Chapter 163, Statutes of 2001.
SUMMARY: This bill creates the Antelope Valley Air Quality Management District for the purpose of carrying out the mandates of the federal Clean Air Act and California air pollution control laws to primarily regulate emissions from all stationary sources.

AB 914 (Shelley)

TOPIC: Public records.
STATUS: Asm Gov Org. Hearing cancelled. (2001-05-07)
SUMMARY: This bill would provide that a public agency shall release, or a court, if judicial proceedings instituted, shall order the release of, any record not expressly prohibited from disclosure if the agency or court finds that withholding the record would seriously harm public interest, public safety, or constitutional rights.

AB 1014 (Papan)

TOPIC: Public Records: disclosure procedures.
STATUS: Chapter 355, Statutes of 2001.
SUMMARY: This bill requires assistance to be given to a member of the public who requests a public record. It requires assistance to identify records and information that may be responsive, describe the information technology and physical location of the records, and provide suggestions for overcoming practical basis for denying access.

AB 1050 (Kehoe)

TOPIC: Local agency meetings: closed sessions.
STATUS: To inactive file. (2006-04-20)
SUMMARY: This bill would require that a legislative body of a local agency hold an open and public session in which it deliberates issues related to the desirability of, and any policy considerations regarding, the transaction prior to a closed session with its negotiator.

AB 1265 (Bill Campbell)

TOPIC: Power plants: CEQA.
STATUS: Read first time. (2001-02-26)
SUMMARY: This bill would declare intent to enact a program to stabilize electrical grid reliability by expediting the CEQA process for "clean" or "green" energy power plants projects.

AB 1553 (Keeley, Coauthor Machado)

TOPIC: Environmental justice.
STATUS: Chapter 762, Statutes of 2001.
SUMMARY: Existing law defines "environmental justice" and requires the state to adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans. This bill prescribes that the next state general plans guidelines address environmental justice matters in city and county general plans. Requires a public hearing prior and after the release of any draft guidelines.

AB 1629 (Prescetti)

TOPIC: Environmental protection.

STATUS: Introduced.

SUMMARY: This bill would express Legislature's intent that a single unified code of environmental protection statutes be established and be administered by a single agency.

SB 34 (Burton and Johnson)

TOPIC: Political Reform Act of 1974.

STATUS: Chapter 241, Statutes of 2001.

SUMMARY: Proposition 34 amended The Political Reform Act of 1974 in November 2000. This bill limits exception to those provisions of Proposition 34 that impose limitations on campaign contributions to, and voluntary expenditures by, candidates and that require the inclusion of candidates who accept voluntary expenditure limits in the statewide ballot pamphlet, except as specified.

SB 147 (Bowen)

TOPIC: Employee computer records.

STATUS: Vetoed.

SUMMARY: This bill would have prohibited an employer from secretly monitoring e-mail or other computer records of an employee, required the employer to distribute workplace privacy and electronic monitoring policies and

practices, and required affected employee to acknowledge receipt. Would have applied to specified public entities; and its violation would have been a misdemeanor.

SB 211

(Torlakson, Coauthor Machado)

TOPIC: Redevelopment indebtedness.

STATUS: Chapter 741, Statutes of 2001.

SUMMARY: This bill changes the community and redevelopment agency laws relating to surplus funds, redevelopment plan, time limit for payment, rehabilitated dwellings and affordable housing. Prohibits Redevelopment Agency of City of Oakland from receiving specified property tax revenue upon certain time extension. Makes related changes. Requires this bill to be chaptered after AB 637 (Chapter 738).

SB 411 (Perata)

TOPIC: Redevelopment: Oakland.

STATUS: First hearing. Held in committee.

SUMMARY: This is a companion bill to SB 211 and would authorize City of Oakland certain flexibility relating to redevelopment and Central District Urban Renewal Plan.

SB 439 (Monteith)

TOPIC: Environmental quality.

STATUS: First hearing. Hearing canceled.

SUMMARY: This bill would modify environmental policies generally by expanding the definition of environment, emergency and related concepts to include activities such as homeownership, employment, educational opportunities, etc.

* Fazle-Rab Quadri, Esq., is a member of the Public Law Section's Executive Committee and chairs its Legislative Subcommittee. He is District Counsel for the Mohave Desert and the Antelope Valley Air Quality Management

A Message From The Chair

By Joyce M. Hicks, Esq.

My column in the Fall 2001 Public Law Journal addressed the events of September 11, 2001. Heightened security in airports is one of the legitimate and necessary responses to the September 11 acts of terrorism. However, balanced with heightened security are the rights of individuals subject to questioning or search in the furtherance of providing safe air travel. Addressing this issue is the article; The Sky's the Limit? Airport Security and Racial, Ethnic and Religious Profiling by Shan K. Thever, Esq., and Jeremy G. March, Esq. This winter's Journal also contains an article for which you can receive MCLE credit, Immigration Consultant Fraud: the Role of Prosecutors, Legal Service Providers and the Bar by Gloria Castro, Esq. You will find an additional article; California Authorities: Research Tips for the Public Lawyer by Kathryn A. Lee, M.L.S. Fazle-Rab Quadri, Esq., provides you with a California state legislative wrap-up in his column, 2001 Legislative Session Sees Governor Signatures, Vetoes and Bills Held in Committees.

CEB Gold Passport

CEB is pleased to announce a new benefit for members of participating sections of the State Bar of California. For those who are currently section members, CEB will apply the cost of the section dues, subject to verification of section membership, towards the purchase of a Gold Passport or a single full-price program ticket. For attorneys who are not current members of one of the participating sections and want to join, CEB will pay the 2002 section membership dues when they purchase a single ticket to a CEB program or a CEB Gold Passport.

These are the participating State Bar of California Sections as of September 1, 2002:

Business Law
Environmental Law
Estate Planning, Trust & Probate Law
Family Law

Workers' Compensation Law
Real Property Law
Public Law
Intellectual Property Law

Only one approved 2002 section membership pre program or Gold Passport purchase is permitted. Participant will receive CEB credit only; no refunds are allowed. This section rebate/credit cannot be combined with any other discount. Visit us at www.ceb.com for an updated list of participating State Bar sections, or call 1-800-232-3444 for more information.



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